

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2663 of 2025

Applicants : Sajam, Arif, and Waris, Through:
M/s. Khawaja Naveed Ahmed and
Ghulam Mustafa Abro, Advocates

Complainant : Amir Ali, Through:
Mr. Habibullah Jamali, advocate.

The State : The State Through Ms. Seema Zaidi,
Additional Prosecutor General,
Sindh

Date of hearing : 25.11.2025

Date of Order : 25.11.2025

ORDER

Jan Ali Junejo, J:- The above-named applicants have filed the present bail application under Section 497 of the Code of Criminal Procedure, 1898, seeking the concession of post-arrest bail in connection with FIR No. 886 of 2025, registered at Police Station SSHIA, Karachi, for offences punishable under Sections 380, 459, 334, 336 and 511 read with Section 34 of the Pakistan Penal Code. Earlier, the applicants approached the Sessions Court by filing Criminal Bail Application No. 3350 of 2025, which was dismissed vide order dated 19-08-2025, and thereafter Criminal Bail Application No. 4335 of 2025, which was also dismissed vide order dated 23-09-2025 passed by the learned IIIrd Additional Sessions Judge, Malir, Karachi. Hence, the applicants have approached this Court.

2. Briefly stated, the prosecution case, as set out in the FIR, is that on 19.07.2025 at about 7:30 p.m., the complainant, namely Amir Ali, along with his younger brother Noman, was present on the roof of their house when the accused persons allegedly trespassed by jumping onto the roof with the intention to commit robbery. Upon being noticed, accused Waris is alleged to have pelted a stone, which struck the complainant's brother, causing injuries to his nose and eye. It is further alleged that due to the hue and cry raised, the accused persons fled away without committing the robbery.

3. Learned counsel for the applicants contended that no robbery was committed and, therefore, the offence under Section 380, PPC remains un-attempted. He argued that a specific role of causing injury has been attributed only to applicant Waris, whereas no overt act has been alleged against applicants Sajan and Arif. He further contended that the applicants have remained in custody for a considerable period and that the Investigating Officer failed to submit the challan within the statutory period despite issuance of show-cause notices. He submits that the case of applicants Sajan and Arif squarely falls within the ambit of further inquiry as envisaged under Section 497(2), Cr.P.C. Lastly, he prayed for grant of post-arrest bail to the applicants.

4. Conversely, learned counsel for the complainant opposed the bail application and argued that the accused persons acted with a

common intention, attracting vicarious liability under Section 34, PPC. He contended that the applicants trespassed into the complainant's house with the intention to commit robbery and that serious injuries were caused during the occurrence. He further argued that sufficient incriminating material is available on record to connect the applicants with the commission of the offence. Lastly, he prayed for dismissal of the bail application.

5. Learned Additional Prosecutor General, Sindh, also opposed the bail application and adopted the arguments advanced by the learned counsel for the complainant. She argued that the offences fall within the prohibitory clause of Section 497, Cr.P.C., that the injuries sustained are serious in nature, and that the applicants are liable under Section 34, PPC. She contended that the available material prima facie connects the applicants with the offence. Lastly, she prayed for dismissal of the bail application.

6. I have heard the learned counsel for the parties at length and have carefully examined the FIR, medical record, the orders passed by the courts below, as well as the available material on record. At the outset, it is observed that the FIR and the supporting material prima facie attribute the act of causing injury solely to applicant Waris, who is alleged to have pelted a stone, resulting in injuries to the complainant's brother. No specific overt act has been assigned to applicants Sajan and Arif, except their alleged presence at the scene

of the occurrence. Admittedly no robbery was committed, and even according to the prosecution case, the accused persons fled away without taking any property. This aspect requires a deeper appreciation of evidence, which is not permissible at the bail stage; however, it is relevant for determining whether the case calls for further inquiry. The record further reflects that the Investigating Officer failed to submit final challan within the statutory period despite repeated directions issued by the trial Court. Such omission on the part of the prosecution creates a benefit of doubt at the bail stage, particularly in respect of applicants Sajan and Arif, against whom no direct role has been assigned. It is a settled principle of criminal jurisprudence that the mere presence of an accused at the scene of occurrence, or association with the principal offender, does not by itself establish common intention unless there is cogent material showing active participation or a prior meeting of minds. Reliance in this regard is placed on the case of *Bashir Ahmed and others v. The State and another (2022 SCMR 1187)*, wherein the Honourable Supreme Court of Pakistan was pleased to hold that:

“Mere presence of an accused with an accused who commits the crime would not constitute his common intention unless there is an evidence referring to the criminal act of that accused committed in furtherance of common intention with the other accused”.

7. The case of applicant Waris stands on a different footing, as a specific role of causing injuries has been attributed to him, which, according to the medical evidence, include fracture of the nasal bone and damage to the eye. At this stage, his case does not fall within the ambit of further inquiry as contemplated under Section 497(2), Cr.P.C.; therefore, applicant Waris is not entitled to the concession of bail at this stage.

8. It is a settled principle of law that at the bail stage only a tentative assessment of the material on record is to be made and any deeper appreciation of evidence is to be avoided. Keeping this principle in view, the role attributed to applicants Sajan and Arif appears to be marginal in nature and requires further probe during the course of trial.

9. In view of the above discussion, this Court is of the considered opinion that: The case of applicant Waris S/o. Arif Masih does not call for further inquiry at this stage, and his bail application is dismissed. The cases of applicants Sajan S/o. Rafiq Masih and Arif S/o Baro fall within the scope of further inquiry under Section 497(2) Cr.P.C., entitling them to the concession of bail.

10. Accordingly, this Criminal Bail Application is partly allowed in the following terms: 1. Bail application of Applicant Waris S/o. Arif Masih is dismissed. 2. Bail application of Applicants Sajan S/o.

Rafiq Masih and Arif S/o. Baro is allowed, and they are hereby admitted to bail subject to their furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) each and P.R. bond in the like amount, to the satisfaction of the learned trial Court, in the above-mentioned FIR. The observations herein are tentative and confined to the decision of bail. The trial Court shall not be influenced thereby and shall adjudicate strictly on the evidence led before it. These are the detailed reasons of the Short Order dated: 25-11-2025.

JUDGE